



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-05-87/1-I

Date: 04 July 2007

Original: English

IN TRIAL CHAMBER III

Before: Judge Frederik Harhoff, Pre-Trial Judge
Registrar: Mr. Hans Holthuis
Order of: 4 July 2007

PROSECUTOR

v.

VLASTIMIR ĐORĐEVIĆ

PUBLIC

**ORDER FOR DISCLOSURE OF SUPPORTING MATERIAL TO THE ACCUSED
AND NON-DISCLOSURE TO THE PUBLIC**

The Office of the Prosecutor

Mr. Thomas Hannis

Counsel for the Accused

Ms. Jelena Nikolić, duty counsel

I, **Frederik Harhoff**, Judge of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“International Tribunal”) am seised of a motion filed by duty counsel for Vlastimir Đorđević (“Duty Counsel” and “Accused”, respectively) on 20 June 2007 seeking delayed disclosure of supporting material to Duty Counsel and the Accused (“Defence Motion”).¹ I am equally seised of a motion from the Office of the Prosecutor (“Prosecution”) requesting that supporting material submitted to Duty Counsel and/or the Accused is not disclosed to the public (“Prosecution Motion”).²

Defence Motion

1. During the Accused’s initial appearance held on 19 June 2007, I ordered the Prosecution to forthwith provide a copy of the supporting material to the Third Amended Joinder Indictment (“Indictment”) to the Accused,³ pursuant to Rule 66(A)(i) of the Rules of Procedure and Evidence (“Rules”).

2. On 20 June 2007, Duty Counsel filed its Motion requesting delayed disclosure of supporting material to Duty Counsel and the Accused. Duty Counsel submits that the Accused “refuses to accept that any disclosure be handed over directly to him”⁴, and requests that any supporting material to the Indictment be handed over directly only to permanent counsel, once assigned.⁵ The reason why the Accused will not accept the supporting material⁶ and opposes Duty Counsel accepting the supporting material is that any subsequent preliminary motions pursuant to Rule 72 of the Rules must be filed not later than 30 days after disclosure of the supporting material to either Duty Counsel or the Accused.⁷ Acceptance of the supporting material would thus potentially prejudice the Accused.

¹ Motion on behalf of Vlastimir Đorđević requesting extension of time to disclose Rule 66(A)(i) material pending assignment of a permanent counsel and postponement of deadlines for filing preliminary motions, 20 June 2007.

² Prosecution’s motion for order of non-disclosure to public of supporting materials disclosed pursuant to Rule 66(a)(i) and materials disclosed pursuant to Rules 66(A)(ii) and 68, filed confidentially on 22 June 2007.

³ Initial Appearance of 19 June 2007, T.6–7.

⁴ Defence Motion, para. 11.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Id.*, para. 14.

3. On 25 June 2007, the Prosecution filed its response to the Defence Motion,⁸ supporting the Defence Motion, and submitting that it would be more efficient to disclose the supporting material to the Indictment once permanent counsel is assigned.⁹

4. To this day, it remains unclear when permanent counsel will be assigned to the Accused. Therefore, since the Accused at his Initial Appearance decided to postpone entering a plea on the charges raised against him,¹⁰ it would be in his interest to receive the supporting material as soon as practicable, despite the absence of permanent counsel. Disclosure of the supporting material is essential to the Accused's right to file preliminary motions pursuant to Rule 72 of the Rules. Naturally, the Accused should not be prejudiced from the current absence of permanent counsel, and he shall therefore be allowed to file any preliminary motion pursuant to Rule 72 of the Rules within 30 days of the assignment of permanent counsel. In the meantime however, it is in the Accused's interest that he has access to the supporting material so he can familiarise himself with the material underlying the charges raised against him.

Prosecution Motion

5. On 22 June 2007, the Prosecution filed its Motion, requesting that any supporting material disclosed to Duty Counsel and/or the Accused not be disclosed to the public. It submits, *inter alia*, that the following factors militate against disclosure of the supporting material to the public (1) the unique circumstances of these proceedings and therefore the extraordinary level of public scrutiny of those involved in it, and (2) as the conflict between chains of command beneath the various accused in the Indictment, and the attendant tensions between the VJ and the MUP, witnesses may be further subjected to heightened scrutiny and risk of interference or intimidation.¹¹ It submits that non-disclosure is necessary to safeguard the security and privacy of the witnesses and the integrity of the evidence and the future proceedings against the Accused, and that it does not violate the Accused's right to a fair trial.¹² The Prosecution requests that the same non-disclosure measures be granted in this case as those granted and currently in force for the accused in the case of *Prosecutor v. Milutinović et al.*¹³

⁸ Prosecution's response to duty counsel motion on behalf of Vlastimir Đorđević requesting extension of time to disclose Rule 66(a)(i) material pending assignment of a permanent counsel and postponement of deadlines for filing preliminary motions, 25 June 2007 ("Prosecution Response to Defence Motion").

⁹ Prosecution Response to Defence Motion, paras. 2–3.

¹⁰ Initial Appearance of 19 June 2007, T. 5.

¹¹ Prosecution Motion, para. 14.

¹² *Id.*, para. 19.

¹³ *Id.*, para. 20.

6. On 29 June 2007, Duty Counsel responded to the Prosecution Motion.¹⁴ Duty Counsel does not oppose the Prosecution Motion, and reiterates its position set out in the Defence Motion.¹⁵

7. The vast majority of the supporting material underlying the Indictment is identical to that underlying the indictments in the cases previously joined to this case. I am satisfied that the reasons for which the Trial Chambers in, *inter alia*, *Milutinović*,¹⁶ *Lukić*¹⁷ and *Lazarević*¹⁸ ordered non-disclosure of material pursuant to Rules 66 A (i), 66 (A) (ii) and 68 are still valid. For any confidential material or other non-public material to be disclosed by the Prosecution pursuant to Rules 66 (A) (i), 66 (A) (ii), and 68, I therefore find that non-disclosure in the present case as well as in the aforementioned cases is necessary and appropriate to protect witnesses and the integrity of confidential material. Non-disclosure to the public, of course, is without prejudice to the Accused's ability to prepare his defence.

PURSUANT TO Rules 53, 54, 66, 68, 126 *bis*, and 127 of the Rules,

For the foregoing reasons, **ORDER** as follows:

- (a) The Prosecution shall forthwith disclose the supporting material to the Indictment to the Accused.
- (b) Preliminary motions pursuant to Rule 72 of the Rules may be filed within (30) thirty days of the assignment of permanent counsel to the Accused.
- (c) The Accused and his counsel shall not disclose to the public:
 - (i) the supporting material disclosed to the Accused pursuant to Rule 66(A)(i) of the Rules or any other confidential or other non-public material disclosed by the Prosecution pursuant to Rule 66(A)(ii) and 68, including the names, identifying information and whereabouts of any witness, except to the limited extent that

¹⁴ Response on behalf of Mr. Đorđević to the Prosecution's Motion for order of non-disclosure to public of supporting materials disclosed pursuant to Rule 66 (A) (i) and materials disclosed pursuant to Rules 66 (A) (ii) and 68 ("Defence Response").

¹⁵ Defence Response, paras. 10 and 11.

¹⁶ *Prosecutor v. Milutinović, Šainović & Ojdanić*, Case No. IT-99-37-PT, Decision on Prosecution's Motion for order of non-disclosure to public of supporting materials disclosed pursuant to Rule 66 (a) (i), 7 June 2002.

¹⁷ *Prosecutor v. Sreten Lukić*, Case No. IT-03-70-I, Decision on prosecution's request for order of non-disclosure to public of materials disclosed pursuant to Rules 66 and 68, filed confidentially 27 April 2007

¹⁸ *Prosecutor v. Vladimir Lazarević*, Case No. IT-03-70-PT, Decision on Prosecution's Motion on order of non-disclosure to public of materials disclosed pursuant to Rule 66 (A) and 68, filed confidentially, 15 March 2005.

such disclosure to members of the public is directly and specifically necessary for the preparation and presentation of the Accused's case;

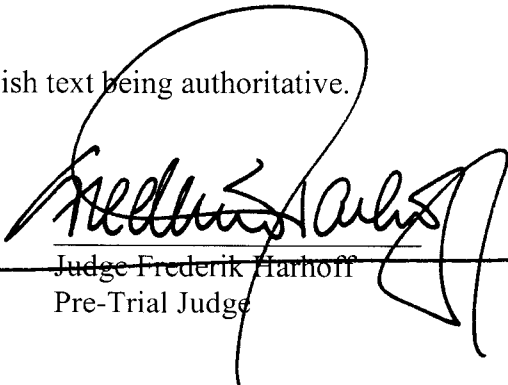
- (ii) the knowledge of the Accused or his counsel or representatives with regard to the identities and whereabouts of the witnesses mentioned in the supporting material or any other confidential or non-public material disclosed by the Prosecution; or
- (iii) any evidence or any written statement of a witness or potential witness, or the substance, in whole or part, of any such non-public evidence, statement or prior testimony disclosed to the Accused pursuant to Rules 66 (A)(i), 66(A)(ii) and 68 of the Rules;

(d) If a member of the Defence team withdraws from the case, all Rule 66 (A)(i) material and all other confidential or non-public material disclosed pursuant to Rules 66(A)(ii) and 68 in his or her possession shall immediately be returned to the lead Defence counsel or the Registry.

(e) All material pertaining to the witnesses shall be returned to the Registry or destroyed following the close of these proceedings.

(f) For the purposes of these Orders, "the public" means all persons, governments, organisations, entities, clients, associations and groups, other than the Judges of the Tribunal and the staff of the Registry (assigned to either Chambers or the Registry), the Prosecutor and her representatives, the Accused in this case, the Defence counsel, legal assistants and other members of the Defence team, their agents or representatives. "The public" specifically includes, without limitation, family, friends and associates of the Accused, accused in other cases or proceedings before the Tribunal, Defence counsel in other cases or proceedings before the Tribunal and the media and journalists.

Done in both English and French, the English text being authoritative.


 Judge Frederik Harhoff
 Pre-Trial Judge

Done this fourth day of July 2007
 At The Hague
 The Netherlands

[Seal of the Tribunal]